IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 18448 of 2006(U)

I.A.2308/01 IN OS.458/2001 of MUNSIFF'S COURT, THIRUVALLA

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PETITIONERS:

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1. P.K.GOPALAKRISHNA PANICKER,
   PADINJATHETHILAYA PUTHEN PARAMBIL HOUSE,
   KOIPROM VILLAGE.

2. P.RAJENDRAN, PADINJATHETHILAYAPUTHEN
   PARAMBIL HOUSE, PULLAD MURI, KOIPROM VILLAGE.

BY ADV. SRI.K.JAGADEESACHANDRAN NAIR
SRI.J.KRISHNAKUMAR
SRI.SAJIKUMAR.K.K.
SMT.DIVYA C BALAN

RESPONDENTS:

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1. P.T.SAMUEL, POOVATHUMMOTTIL HOUSE,
   PULARIKKAD, PULLADMURI, KOIPROM VILLAGE.

2. SAMSON THOMAS, POOVATHUMMOTTIL HOUSE,
   PULARIKKAD, PULLADMURI, KOIPROM VILLAGE.

3. BLESSON SAMUEL, POOVATHUMMOTTIL HOUSE,
   PULARIKKAD, PULLADMURI, KOIPROM VILLAGE.

BY ADV. SRI.ALEXANDER THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.18448/06

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN O.S.458/01 DT.18.7.01, M.C., THIRUVALLA.

EXT.P2 – TRUE COPY OF I.A.2308/01 IN O.S.458/01.

EXT.P3 – TRUE COPY OF ORDER IN I.A.2308/01, DT.23.8.01.

EXT.P4 – TRUE COPY OF INTERIM STAY ORDER IN CMP.5205/01 IN CRP.2443/01 DT.18.1.02.

EXT.P5 – TRUE COPY OF JUDGMENT IN CRP.2443/01 DT.21.2.06.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.18448 OF 2006

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DATED THIS THE 16th JULY, 2007

J U D G M E N T

The plaintiffs in an original suit filed for injunction and for ancillary reliefs are aggrieved by Ext.P3 order passed by the learned Munsiff dismissing their application for amendment of the plaint so as to correct what, according to them, was an inadvertant clerical error in the description of plaint schedule item No.3. Item No.3 in the plaint is described as a 6 feet wide strip of land situated on the southern side of plaint item No.2. In fact, the description is in Malayalam and the same is as follows:- "

But, in the body of the plaint it has been stated that the above strip of land forms part of item No.2:- The amendment sought for was that the words "

in the description of item 3 shall be corrected as "

In other words, the amendment was to make the property-schedule description conform to the averments in the body of the plaint. Upholding the objections raised by the respondents, the learned Munsiff followed the judgment of the Supreme Court in **B.K.N.Pillai v. P.Pillai** (2000 (1) KLT 274) and dismissed the application holding that the mistake on the part of the master of the suit cannot be allowed to

be rectified since the same will cause prejudice to the defendants.

2. I have heard the submissions of Mr.K.Jagadeesachandran Nair, learned counsel for the petitioners and Mr.Alexander Thomas, learned counsel for the respondents.

3. Mr.Alexander Thomas would make strenuous and sincere submissions in his endeavour to sustain the impugned order. The learned counsel relied on the judgment of this Court in **Kalpakamani & Others v. Shajathan & Another** (2005 (3) KLJ 305) so as to remind me of the limitations of this Court's supervisory jurisdiction under Article 227. Counsel also relied on the judgment of the Delhi High Court in **Faqir Chand v. Lila Ram** (AIR 1994 Delhi 161) and that of the Supreme Court in **Balakrishnan v. Shree D.M.Sansthan** (AIR 1959 SC 798) to advance an argument that the amendment will render the acts which the respondents have already performed, i.e., construction of building upon the property which, according to the admissions in the plaint, belonged to the respondents, illegal. The prejudice to be caused to the respondents will be real according to the learned counsel since it is likely that the plaintiffs may come forward with an application for mandatory injunction for demolishing portions of the constructions already put up by the respondents lawfully.

4. Sri.Jagadeesachandran Nair would resist the submissions of Sri.Alexander Thomas. The learned counsel would rely on the judgment of the Divison Bench in **Jancy Chandy v. Jose Puthenkala** (2006 (4) KLT 116) to contend that the Constitutional jurisdictions of this Court under Articles 226 and 227 are not to be cribbed, cabined or confined by technical pleas. This Court has power on considerations of justice under Articles 226 and 227 to issue any order, submitted the learned counsel. Counsel also relied on the judgment of the Supreme Court in **Titaghur Paper Mills Co. v. Their Workmen** (AIR 1959 SC 1095), to argue that when conclusions are drawn by lower courts without adverting to the materials available on record, the same will amount to error of law which will have to be corrected by the High Court under the supervisory jurisdiction. For the same proposition, the learned counsel relied on the judgment of the Supreme Court in **Sunila Jain v. Union of India** [(2006) 3 SCC 321].

5. Having considered the ratio emerging from the various decisions cited at the Bar and having kept in mind the principles to govern exercise of power under Order VI Rule 17, I am of the view that the learned Munsiff could have allowed the application after ensuring that his order does not cause any prejudice to the

respondents. Obviously, it was a clerical error which was sought to be corrected by the amendment application and should ordinarily have been allowed. But, in the present case, since the application for amendment comes after the completion of the construction of the building in question at a time when the unamended suit was in operation, it is likely to cause prejudice to the defendants who constructed the building. It is to be ensured that the amendment does not result in a situation of the defendants being compelled to demolish the building on the reason that the same is constructed in violation of the injunction order.

6. Under the above circumstances, setting aside the impugned order I allow the application for amendment filed by the petitioners, but only prospectively, i.e., with effect from 9.8.2001, the date of the amendment application.

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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